

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3978 OF 2018

Vinod Rangildas Mehta & Anr.

...Petitioners

V/s.

Municipal Corporation of Greater
Mumbai & Anr.

...Respondents

Mr. Girish Kulkarni a/w Mr. Kripashankar N. Pandey i/by Ms.
Mrunmai Kulkarni for Petitioners.

Mr. Kunal Waghmare for Respondent No.1 (MCGM).

Ms. G. P. Mulekar, APP for Respondent No.2 (State).

CORAM : AMIT BORKAR, J.

DATE : OCTOBER 18, 2022

P.C.:

1. Petitioners are challenging order of issuance of process which is undated. Perusal of order of issuance of process shows that the learned Magistrate has affixed a seal which is already prepared. It is well settled that while passing order of issuance of process, the learned Magistrate needs to apply judicial mind. The application of judicial mind needs to be demonstrated from the text of the order passed. The order needs to be either dictated in open Court or needs to be hand written by the learned Magistrate. The affixing of seal to pass an order of issuance of process shows that the learned Magistrate has mechanically affixed the seal. The non-existence of date also indicates that there is complete non-application of judicial mind. The practice of affixing a seal while

passing order of issuance of process needs to be deprecated.

2. In that view of the matter, the order of issuance of process cannot be sustained.

3. However, it would be open for the Magistrate to consider the complaint on merits and pass appropriate orders in accordance with law. Hence, the following order is passed:-

- (i). The order of issuance of process (undated) passed by the learned Metropolitan Magistrate, 41st Court at Shindewadi, Mumbai vide CC No.4117402/SS/2015 is quashed and set aside.
- (ii). Learned Magistrate shall re-consider the complaint and pass appropriate order in accordance with law.
- (iii). Rule is made absolute in the above terms.

(AMIT BORKAR, J.)